

# BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

*In re:*  
*Claim of Raymond Lee*

TIRC Claim No. 2013.167-L  
(Relates to Cook County Circuit Court  
Case 00-CR-3709)

## **I. CASE DISPOSITION**

Pursuant to Section 40/45(c) of the Illinois Torture Inquiry and Relief Act (TIRC Act, 775 ILCS 40/1 *et seq.*) and 2 Ill. Adm. Code 3500.385(b), the Commission concludes that there is sufficient credible evidence of torture to merit judicial review of Raymond Lee's claims of torture.

## **II. EXECUTIVE SUMMARY**

On August 5, 2013, Raymond Lee filed a TIRC Claim Form alleging that he confessed to the crimes of first degree murder, home invasion, and burglary after being beaten and tortured by Chicago Police Department Area Two Detectives Michael Cummings, Phillip Graziano, Eileen Heffernan and Daniel Judge in 2000.<sup>1</sup> Mr. Lee alleges that he was taken to the police station for "questioning" and was held for approximately two days. During this time, Mr. Lee alleges that he was slapped on the face and on his body on a number of occasions, thrown against a wall, and hit about the body. Mr. Lee alleges that he was intimidated and threatened with additional physical harm and the death penalty. Mr. Lee alleges that he was given little food and kept in a room where the light was on all of the time, making it difficult or impossible to sleep. Mr. Lee alleges that after he was held in police custody for approximately two days, he gave a confession on video and signed a statement based on a promise that he received from the detectives: namely, that if he did not confess to the crimes Mr. Lee would get the death penalty, but that the detectives could and would ensure that he received a sentence of "a couple of years" for a reduced charge of "strong armed robbery" if he did confess.

There are factors that weigh against Mr. Lee's allegations. First, there is no physical evidence of any abuse or injury and Mr. Lee testified that his injuries weren't serious enough to merit medical attention. Second, each of the detectives involved in the investigation have denied that any abuse took place. Finally, the Illinois Appellate Court for the First District of Illinois has reviewed the trial court's order denying Mr. Lee's motion to suppress his statements and found that the trial court's findings were not against the manifest weight of the evidence presented during the motion's hearing.

However, there are substantial factors that support Mr. Lee's allegations of torture. Specifically, Mr. Lee's claims have remained generally consistent over time -- a period of over fifteen years. Mr. Lee's trial counsel's recollection corroborates Mr. Lee's claims: he recalls that Mr. Lee told him in January 2000 about the physical abuse and threats made against him while in

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<sup>1</sup> See TIRC Claim Form of Raymond Lee, attached hereto as Exhibit 1.

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custody, and provided specific details that remained consistent over time. This account is reflected in Mr. Lee's original motion to suppress, filed in October 2000, and consistent with the amended motions to suppress that were filed in February and October 2008. Trial counsel also provided evidence that corroborates Mr. Lee's claims that he requested and was refused counsel during his detainment. The administrative files of the detectives implicated in the claim are voluminous, and each detective has had claims filed against him or her alleging physical violence or the violation of Chicago Police Department protocols regarding treatment of individuals. For one of the detectives, claims include those filed by witnesses who testified in this matter and one of Mr. Lee's co-defendants.

### III. FINDINGS OF FACT

This section presents the facts and circumstances concerning Mr. Lee's offense and arrest, his confession, and the subsequent legal proceedings, including Mr. Lee's trial, appeal therefrom, and petitions for post-conviction relief.

On January 3, 2000, elderly brothers Preston and Raymond Stofer were robbed and beaten in their home at 1041 W. 112th Place in Chicago, Illinois and subsequently killed when the home was set on fire.<sup>2</sup> On January 4, 2000, at approximately 10:30 p.m., Mr. Lee was arrested for the crime.<sup>3</sup> On January 6, 2000, while in police custody, Mr. Lee made inculpatory oral and videotaped statements to the police.<sup>4</sup> On January 28, 2000, Mr. Lee, along with co-defendants John Mitchell and Robert Campbell, were indicted with multiple counts of first-degree murder, home invasion, residential burglary, arson, and robbery.<sup>5</sup>

On October 31, 2000, Mr. Lee filed motions to quash arrest (the "Motion to Quash") and to suppress his inculpatory statements (the "Motion to Suppress").<sup>6</sup> The Motion to Suppress alleged that during the two days that Mr. Lee was kept in an interview room at the police station, detectives were in and out of the room at various times, attempting to convince Mr. Lee to speak to them by intimidation and force, including through the following:

- (i) Mr. Lee, on multiple occasions following his arrest, advised the police officers who took him into custody that he wanted to speak to an attorney prior to any questioning by any police personnel but was told that Mr. Lee was "going [to] talk and that he would not be able to see a lawyer";<sup>7</sup>
- (ii) Detective Heffernan made threats against Mr. Lee, including that "he was going to be charged with a double murder and that he would wait ten years waiting for the needle," that "his best guy was going to be [expletive redacted] his girlfriend and his son would watch him on TV dying while his family was picketing the

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<sup>2</sup> Exhibit 2, *People v. Lee*, 2012 IL App (1st) 101851, at ¶3 (the "2012 App. Ct. Order").

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*; Indictment, *People v. Raymond Lee, John Mitchell and Robert Campbell*

<sup>6</sup> *Id.* at ¶ 4; see also Exhibit 3, Motion to Quash; Exhibit 4, Motion to Suppress.

<sup>7</sup> Exhibit 4, Motion to Suppress, at ¶¶ 2, 6-7, 9, 11.

County Jail,” and told him “[y]ou are going to get the death penalty. I hear that the needle is really hot. You’ll only hurt for a minute but it is really hot.”<sup>8</sup>

- (iii) Mr. Lee was, at various times, thrown against the wall, struck several times in the ribs, face, and about the body by Detective Cummings;<sup>9</sup>
- (iv) Detective Cummings threatened Mr. Lee, including that he would return without his gun and “really [expletive redacted] you up” and that he was going “to get ‘the belt’”;<sup>10</sup>
- (v) Detective Judge and other unknown police officers told Mr. Lee that Mr. Lee should not mess with Cummings “because he was crazy and would kill him”;<sup>11</sup>
- (vi) Mr. Lee witnessed Detective Cummings walking back and forth in front of the interview room with what appeared to be a weightlifting belt, “snapping it in a manner to intimidate the Defendant”;<sup>12</sup> and

Detectives Judge and Graziano told Mr. Lee that “[i]f you were just there to get your money and [co-defendant Mitchell] goes crazy, you won’t get the death penalty. You are just a robber and you won’t get the death penalty. You will be charged with Strong Armed Robbery and you’ll be out in seven years. Use your brain.”<sup>13</sup> Trial counsel for Mr. Lee also issued a subpoena to the City of Chicago in 2001, seeking records relating to “beatings of suspects, threats of suspects, holding people without arresting them, and the use of phrases such as ‘the needle is awful hot,’ and other phrases relating to the administration of the death penalty during interrogations, or the giving of the death penalty, including allegations of beatings of any kind, threats, and assertions that suspects cannot handle pain.”<sup>14</sup> Mr. Lee’s Response to the City’s Motion to Quash the Subpoena avers that the subject matters requested in the subpoena “are clearly in issue” in Mr. Lee’s case and references the motion to suppress statements.<sup>15</sup> On March 8, 2004 an amended motion to quash arrest and suppress evidence was filed (the “Amended Motion to Quash”). The Amended Motion to Quash alleged that the police lacked probable cause to arrest Mr. Lee, and that Mr. Lee was held for three days in police custody after arrest

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<sup>8</sup> *Id.* at ¶¶ 8, 16.

<sup>9</sup> *Id.* at ¶¶ 10, 22.

<sup>10</sup> *Id.* at ¶¶ 15, 21, 23.

<sup>11</sup> *Id.* at ¶ 25.

<sup>12</sup> *Id.* at ¶ 26.

<sup>13</sup> *Id.* at ¶ 49; *see also* TIRC Compiled ROP at 1074-1075, Motion to Suppress Hearing of Oct. 25, 2008, testimony of Raymond Lee.

<sup>14</sup> Exhibit 5, Lee’s Response to City’s Motion to Quash Subpoena, filed October 30, 2001, at 2; Exhibit 6, Interview with B. Spector at 2.

<sup>15</sup> Exhibit 5, Lee’s Response to City’s Motion to Quash Subpoena, filed October 30, 2001, at 2.

“until the police obtained incriminating statements.”<sup>16</sup> The Amended Motion to Quash did not contain allegations of beatings, threats, intimidation or torture.<sup>17</sup>

On March 4, 2004 Judge Sumner granted the Amended Motion to Quash, finding that the police had lacked probable cause to arrest Mr. Lee.<sup>18</sup> Thereafter, the State filed a motion for attenuation, arguing that intervening probable cause existed shortly after the defendant's arrest and that his inculpatory statement was sufficiently attenuated from the illegal arrest.<sup>19</sup> On January 5, 2005, at the attenuation hearing, the trial court ruled that Mr. Lee's inculpatory statement was sufficiently attenuated from his illegal arrest.<sup>20</sup>

However, upon reconsideration on February 24, 2005, the trial court reversed its previous ruling on the motion for attenuation and found that no attenuation existed.<sup>21</sup> Judge Sumner found that “there was misconduct on the part of the police. I won't say that it's the worst conduct I've ever heard, but I would say that it was rather flagrant.”<sup>22</sup> Judge Sumner further held that Mr. Lee had been arrested illegally and the police had obtained information from him that they ultimately used to gather other information, and subsequently confronted Mr. Lee with that information,<sup>23</sup> leading to the conclusion that there was no evidence that what the defendant said was influenced by untainted evidence making it “impossible to prove what it was that made the Defendant say what he said.”<sup>24</sup>

On March 18, 2005, the State appealed the trial court's February 24, 2005 ruling, arguing that probable cause existed for Mr. Lee's arrest.<sup>25</sup> On October 17, 2006, in reversing the trial court's ruling, the appellate court found that Mr. Lee's arrest was supported by probable cause and remanded the matter for a hearing on Mr. Lee's motion to suppress evidence, finding that “[n]othing in the record indicates that the trial court ruled on the defendant's motion to suppress his inculpatory statements based on the voluntariness of the statements.”<sup>26</sup>

On remand, the defendant filed an amended motion to suppress statements (the “Amended Motion to Suppress”). The Amended Motion tracked the original Motion to Suppress, alleging that his inculpatory statement was involuntary because it was obtained as a product of police coercion and in violation of his constitutional rights.<sup>27</sup> The Amended Motion to Suppress further alleged that the “pervasive pattern of flagrant police misconduct that existed

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<sup>16</sup> Exhibit 7, Amended Motion to Quash, filed March 8, 2004, at ¶ 2.

<sup>17</sup> See generally *id.*

<sup>18</sup> Exhibit 2, 2012 App. Ct. Order, at ¶ 4.

<sup>19</sup> *Id.*

<sup>20</sup> TIRC Compiled ROP at 628:6-14, Feb. 24, 2005 Hr'g Tr., Motion to Reconsider Order on State's Motion to Attenuate at 20:3-5 (reversing its ruling following a motion to reconsider).

<sup>21</sup> *Id.*; Exhibit 2, 2012 App. Ct. Order, at ¶ 4.

<sup>22</sup> TIRC Compiled ROP at 626:20-23, Feb. 24, 2005 Hr'g Tr., Motion to Reconsider Order on State's Motion to Attenuate.

<sup>23</sup> TIRC Compiled ROP at 626:24-627:6, Feb. 24, 2005 Hr'g Tr., Motion to Reconsider Order on State's Motion to Attenuate.

<sup>24</sup> *Id.* at 628:6-12.

<sup>25</sup> Exhibit 2, 2012 App. Ct. Order, at ¶ 4.

<sup>26</sup> Exhibit 8, *People v. Lee*, No. 1-05-0923, slip op. at 4 (1st Dist. Oct. 17, 2006).

<sup>27</sup> Exhibit 2, 2012 App. Ct. Order, at ¶ 5; see also Exhibit 9, Amended Motion to Suppress, filed on February 26, 2008.

throughout the entire investigation of the case is evidence[d] by (1) multiple instances of the illegal arrests of witnesses; (2) multiple instances of the illegal detention of witnesses; (3) the physical abuse of witnesses and the defendant; (4) the coercion of statements from witnesses that were told to the defendant prior to him giving the statement the state seeks to introduce at trial; (5) the illegal arrest of all co-defendants; (6) the illegal searches and seizure of witness property; (7) the failure to adequately memorialize events in the police reports; and (8) the lack of credibility of the detectives in this case as reflected in previous pre-trial rulings by Judge Sumner; that began on January 4, 2000 and continued until he made the statement that the state seeks to introduce into evidence.”<sup>28</sup>

A hearing on the Amended Motion to Suppress was held by Judge Claps, following Judge Sumner’s retirement, beginning on October 15, 2008 and continuing on several days over the span of approximately two months. In relevant part, Mr. Lee testified at length regarding the circumstances and events that took place while he was held at the police station, his testimony in line with the allegations contained in the Amended Motion to Suppress.<sup>29</sup> Mr. Lee testified that he was arrested on January 4, 2000, and that the arresting police officers read him his Miranda rights in the police car, at which time he invoked his right to remain silent and right to counsel.<sup>30</sup> Upon his arrival at the police station, he was placed in an interview room for 30 minutes before Detectives Cummings and Heffernan appeared.<sup>31</sup> The detectives never told Mr. Lee that he was not obligated to speak with them, nor did they advise him of his rights to an attorney and to remain silent.<sup>32</sup> When Mr. Lee invoked his right to counsel again, Detective Cummings began slapping his face and accusing him of murder.<sup>33</sup> Detective Heffernan also told the defendant that he was “going to get the death penalty for the murders. Your family is going to be \* \* \* watching it on TV. They’re going to be picketing the County trying for [you] not to get the death penalty. Somebody else is going to be raising [your] son, and [your] best friend is going to be [expletive] [your] girl.”<sup>34</sup> On the next day, Detectives Cummings and Heffernan came into the interview room and tried to question the defendant, whose request for an attorney was again denied.<sup>35</sup> At some point during the 30-minute encounter, Detective Cummings exited the interview room and the defendant observed him “snapping” a weight-lifting belt in an effort to intimidate the defendant.<sup>36</sup> Mr. Lee claimed that during his time in custody, Detective Cummings was “always slapping” him.<sup>37</sup> Mr. Lee asserted that he eventually provided Detective Cummings with an alibi—namely, that he was at co-defendant Robert Campbell’s house at the time of the murders. However, when Mr. Lee later saw Mr. Campbell’s mother, Pat Good, at the police station, he knew that his alibi was not working because Ms. Good would tell the police that he had not in fact been at her home with co-defendant Campbell until 3 p.m. on the day of the murders.<sup>38</sup> At some point, Detective Cummings also informed the defendant that co-

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<sup>28</sup> Exhibit 9, Amended Motion to Suppress.

<sup>29</sup> TIRC Compiled ROP at 1046-1080, Nov. 25, 2008 Hr’g Tr., Amended Motion to Suppress.

<sup>30</sup> Exhibit 2, 2012 App. Ct. Order, at ¶ 14.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

defendants Campbell and Mitchell had implicated the defendant in the crimes, and that witness Theodore Macklin had seen Mr. Lee at the victims' home on the day of the murders and Mr. Lee had threatened to burn the house down.<sup>39</sup> Mr. Lee also testified that the lights were on in the interview room for the entire time he was there and he did not sleep;<sup>40</sup> Detective Cummings slapped him on his face;<sup>41</sup> that Detectives Judge and Graziano told him "not to be stupid" and that it was better to be a robber than a murderer, "you know what I'm saying," and promised Mr. Lee that he would only be charged with robbery if he confessed.<sup>42</sup> Mr. Lee also testified that he was brought food one time during his time in the interview room.<sup>43</sup> Mr. Lee further testified that he believed, at that point, confessing was "his only way out."<sup>44</sup> Subsequently, Mr. Lee made incriminating statements to Detectives Judge and Graziano.<sup>45</sup> On January 6, 2000, the defendant made a videotaped statement, outside the presence of Detective Cummings, after Assistant State's Attorney George Canellis advised him of his constitutional rights.<sup>46</sup> Mr. Lee also testified that he did not tell the Assistant State's Attorney during his videotaped confession, or the paramedic at the Cook County jail about his treatment or his injuries because he "wasn't beaten badly enough to make an issue out of it."<sup>47</sup>

The parties stipulated that, if called to testify, Cermak Health Services medical intake paramedic Charles Spivey would testify that on January 8, 2000, he examined the defendant and found no signs of physical injury, nor did the defendant complain of any injuries.<sup>48</sup>

The defense presented the testimony of several witnesses. Terry Barnett testified that on January 4, 2000, when the police arrested the defendant in front of Terry's home, Mr. Lee told the police officers that "I don't want to say nothing, I want a lawyer."<sup>49</sup> Dedric Scales testified that on January 5, 2000, he went to the police station where he spoke with police officers regarding the offense at issue.<sup>50</sup> Mr. Scales stated that he was repeatedly denied his requests for an attorney and that Detective Cummings threatened to charge him with murder if he did not tell the truth.<sup>51</sup> The police officers never advised him of his constitutional rights.<sup>52</sup> On cross-examination, Scales stated that an assistant State's Attorney had advised him of his Miranda rights, which he waived by agreeing to speak with her, and that he signed a handwritten statement.<sup>53</sup> He also informed the Assistant State's Attorney that he was treated "fair" and "well" by the police.<sup>54</sup> Theodore Macklin testified that he went to the police station on January

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<sup>39</sup> *Id.*

<sup>40</sup> TIRC Compiled ROP at 1057-58, 1063, Nov. 25, 2008 Hr'g Tr., Amended Motion to Suppress.

<sup>41</sup> *Id.* at 1053,

<sup>42</sup> *Id.* at 1075.

<sup>43</sup> *Id.* at 1062-63.

<sup>44</sup> TIRC Compiled ROP at 1114, Nov. 26, 2008 Hr'g Tr., Amended Motion to Suppress.

<sup>45</sup> Exhibit 2, 2012 App. Ct. Order, at ¶ 14.

<sup>46</sup> *Id.*

<sup>47</sup> TIRC Compiled ROP at 1094-96, Nov. 26, 2008 Hr'g Tr., Amended Motion to Suppress.

<sup>48</sup> Exhibit 2, 2012 App. Ct. Order, at ¶ 10.

<sup>49</sup> *Id.* at ¶ 11.

<sup>50</sup> *Id.* at ¶ 12.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

4, 2000 and spoke with Detective Cummings who told Mr. Macklin that he was in trouble for murder.<sup>55</sup> Detective Cummings slapped his face several times, causing Mr. Macklin to lose an earring, and pushed him so hard that he fell out of his unlaced shoes.<sup>56</sup> The police officers also failed to heed Mr. Macklin's requests for an attorney, but he was eventually able to confer with an attorney his mother had sent to the police station.<sup>57</sup> Mr. Macklin stated that he was at the police station for three days and that the police gave him food that had been partially eaten and a soda that was already open.<sup>58</sup> Mr. Macklin also voluntarily submitted to a lie detector test, but never informed the polygraph examiner, the Assistant State's Attorney, or the grand jury that he was mistreated by the police.<sup>59</sup> Rather, he indicated that he was treated "okay" by the police officers.<sup>60</sup> Subsequently, Mr. Macklin's mother filed a complaint with the police department regarding his mistreatment by the police; however, Mr. Macklin later chose not to pursue the complaint.<sup>61</sup>

A number of police officers testified at the hearing on behalf of the State. Sergeant Robert Larson testified that on the evening of January 4, 2000, he located Mr. Lee in the vicinity of 112th Place and Aberdeen Street and escorted him to the Area 2 police station.<sup>62</sup> Mr. Lee did not invoke his right to counsel at any time; however, Sergeant Larson stated that he did not advise the defendant of his *Miranda* rights nor question him regarding the crimes at issue.<sup>63</sup>

Detective Heffernan testified that she had been assigned to investigate the murders of Preston and Raymond Stofer.<sup>64</sup> On January 4, 2000, at approximately 11:30 p.m., she and her partner, Detective Cummings, interviewed the defendant at the police station.<sup>65</sup> Upon their arrival in the interview room, Detective Cummings advised the defendant of his *Miranda* rights, to which the defendant responded that he understood his rights and he agreed to speak with the detectives.<sup>66</sup> During the 45-minute interview, the defendant provided the detectives with an alibi.<sup>67</sup> Detective Heffernan further testified that on January 5, 2000, at approximately 9 a.m., food was brought to the defendant and she and Detective Cummings spoke with him for a few minutes in the interview room, during which they informed him that they would investigate his alibi.<sup>68</sup> On January 6, 2000, at approximately 1 a.m., Detectives Heffernan and Cummings had another conversation with the defendant after he waived his *Miranda* rights.<sup>69</sup> During this 30-minute interview, the detectives informed the defendant that several individuals had implicated

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<sup>55</sup> *Id.* at ¶ 13.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at ¶ 5.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at ¶ 6.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

him in the murders.<sup>70</sup> According to Detective Heffernan, at no time did Mr. Lee ever invoke his right to counsel.<sup>71</sup> She denied that Detective Cummings ever physically struck the defendant or made any verbal threats against him in her presence.<sup>72</sup> She denied ever taunting the defendant with the threat of the death penalty or telling him that he had “better not mess with Detective Cummings because he was crazy and would kill him.”<sup>73</sup> Detective Heffernan also denied seeing Detective Cummings walk back and forth during the interview with a weightlifting belt and snapping it in front of the defendant, and denied that Detective Cummings told the defendant to “be smart” because this was a “double murder” for which he would receive the death penalty, but that “[i]t's okay if [he] just went in there to get [his] money and something happened that [he] didn't want to.”<sup>74</sup> The defendant never complained to Detective Heffernan or anyone else that he had been struck or mistreated by the police.<sup>75</sup> He was not handcuffed at any time during the interviews.<sup>76</sup>

Detective Cummings' testimony at the hearing on the amended motion to suppress was substantially similar to Detective Heffernan's testimony.<sup>77</sup> Detective Cummings further testified that during the early evening of January 5, 2000, he introduced the defendant to Detective Graziano, who was also investigating the murders.<sup>78</sup> At noon on January 6, 2000, Detective Cummings informed the defendant of the progress of the investigation, that co-defendants Mitchell and Campbell had confessed to the crime and also implicated the defendant, and that Detective Cummings was going to gather evidence from the crime scene and a co-defendant's home.<sup>79</sup> Detective Cummings denied ever striking the defendant or having any physical contact with him.<sup>80</sup> He further denied making any verbal threats against the defendant or referencing the death penalty during the interviews.<sup>81</sup> Detective Cummings testified that the defendant neither invoked his right to remain silent nor requested the presence of an attorney at any time.<sup>82</sup>

Detective Graziano also testified to the following: on January 5, 2000, he was introduced to the defendant, who was not handcuffed and appeared physically and mentally well.<sup>83</sup> Detective Cummings was present at the time and asked the defendant if he needed anything to eat or drink or to use the restroom.<sup>84</sup> On January 6, 2000, at approximately 8 p.m., he and Detective Judge advised the defendant of his constitutional rights, which the defendant acknowledged he understood.<sup>85</sup> Detective Graziano then told the defendant that he knew how

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at ¶ 7.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at ¶ 8.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*



and when the crime occurred.<sup>86</sup> Detective Graziano then commented to the defendant that “isn't it better to be known as a liar and a thief than a killer of old men?”<sup>87</sup> Detective Graziano denied making or seeing anyone make a promise to the defendant that he would only be charged with strong-arm robbery, which carried a seven-year sentence, if he confessed.<sup>88</sup> During the entire 20 to 30 minutes of conversation, the defendant never asked to speak with an attorney.<sup>89</sup> The defendant did not complain to Detective Graziano of any ill treatment by the police nor did Detective Graziano ever observe any police officers physically or verbally threaten the defendant.<sup>90</sup>

On January 2, 2009, Judge Claps denied Mr. Lee's Amended Motion to Suppress, finding that based on his observation of the “manner of his statement, his mannerisms and his voice and the look in his eyes” on the videotaped confession, Mr. Lee's statement was made voluntarily.<sup>91</sup> Judge Claps further found Mr. Lee's testimony and allegations to be incredible, including his claims that he had invoked his right to counsel during the interviews and that he had only confessed as a result of the promise of a lesser charge.<sup>92</sup> However, as part of his oral ruling on the motion, Judge Claps made the following finding:

I viewed the tape, and there was physical and psychological coercion. Lack of food, lack of sleep are the issues raised, as well as the conduct of the police as it applied to other witnesses, and these witnesses testified to whatever degree about the facts relating to their contact with the police who were investigating this.<sup>93</sup>

On January 29, 2009, trial counsel filed a Motion for Reconsideration on Amended Motion to Suppress Statements, alleging that Mr. Lee's statement was given “because of [an] implied or direct promise” that Mr. Lee would be charged only with robbery after Mr. Lee had been in police custody for approximately two full days, during which time “the lights in the room where he was kept were continuously left on making it impossible for him to sleep.”<sup>94</sup> On February 20, 2009, at the hearing on the defendant's motion to reconsider the trial court's January 2, 2009 ruling, the trial court clarified that its conclusion regarding the voluntariness of the defendant's statement was based upon the totality of the circumstances.<sup>95</sup> The trial court denied the defendant's motion to reconsider.<sup>96</sup>

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<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at ¶ 15; *see also* TIRC Compiled ROP at 1179:11-20, Jan. 2, 2009 Hr'g Tr., Amended Motion to Suppress.

<sup>92</sup> Exhibit 2, 2012 App. Ct. Order, at ¶ 15; TIRC Compiled ROP at 1179:21-1180:7, Jan. 2, 2009 Hr'g Tr., Amended Motion to Suppress.

<sup>93</sup> TIRC Compiled ROP at 1177:7-15, Jan. 2, 2009 Hr'g Tr., Amended Motion to Suppress.

<sup>94</sup> Exhibit 10, Motion for Reconsideration on Amended Motion to Suppress Statements, filed Jan. 29, 2009, at ¶¶ 8-11.

<sup>95</sup> Exhibit 2, 2012 App. Ct. Order, at ¶ 15.

<sup>96</sup> *Id.*

A jury trial commenced on May 11, 2010, and Mr. Lee was convicted of first-degree murder, robbery, arson, residential burglary and home invasion.<sup>97</sup> Mr. Lee appealed his conviction, arguing that (1) the trial court erred in denying the Amended Motion to Suppress; (2) Mr. Lee was denied his constitutional right to confront and cross-examine the medical examiner who performed the victims' autopsies and authored the autopsy reports; and (3) under the one-act, one-crime rule, the mittimus should be corrected to reflect only two first-degree murder convictions, one arson conviction, one conviction for home invasion, and one conviction for robbery.<sup>98</sup> The Appellate Court affirmed the judgment of the trial court, finding in relevant part that Mr. Lee's allegations of physical coercion centered solely on *his* version of what occurred and referenced the portions of the record in which the detectives denied ever striking or observing anyone strike Mr. Lee during his time in custody, and further denied seeing Detective Cummings snap a weightlifting belt to intimidate the defendant.<sup>99</sup>

#### **IV. TIRC INVESTIGATION**

TIRC's investigation involved in-person, video, and telephonic conference with Mr. Lee and his trial counsel. In addition, thousands of pages of documents from Mr. Lee's and his co-defendants' proceedings were reviewed as part of the investigation. A subpoena for documents was issued to the Chicago Police Department and TIRC reviewed documents received in response relating to claims filed against the detectives implicated in Mr. Lee's claim.

##### **A. Interview of Mr. Lee**

On August 29, 2017, TIRC investigators conducted an interview by video conference with Mr. Lee, who was physically present at Menard Correctional Center. The interview lasted approximately one hour and forty-five minutes. Mr. Lee was represented by counsel. Mr. Lee's account of the events was largely consistent with testimony from the hearing proceedings on November 25-26, 2008 and also included in his TIRC Claim Form.

Mr. Lee represented that he had been picked up on 112th Street and Aberdeen by two male officers in an unmarked vehicle on the evening of January 4, 2000.<sup>100</sup> The officers had a picture of Mr. Lee and had been looking for him. Mr. Lee was taken to the Area 2 police station and waited on a bench in an interrogation room. Mr. Lee waited less than an hour before Detective Cummings and Detective Heffernan came into the room. They were in the room for 20-30 minutes this time. Detective Cummings asked Mr. Lee if he knew why he was there; Mr. Lee told Detective Cummings that he wanted a lawyer and Detective Cummings slapped him in response "within the first minute of entering the room," told him that he would not see his lawyer, that Detective Cummings knew Mr. Lee had killed people, and called him a name. Detective Heffernan watched this happen. Detective Cummings slapped Mr. Lee in the face, and hit him in the body. At some point, Detective Cummings handcuffed Mr. Lee to the bench.

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<sup>97</sup> *Id.* at ¶¶ 16, 22.

<sup>98</sup> *Id.* at ¶ 1.

<sup>99</sup> *Id.* at ¶¶ 1, 32

<sup>100</sup> This fact, and all others following in this section were obtained from the recording of Mr. Lee's interview on August 29, 2017.

Threats included “this is a double murder. You’re going to get the death penalty. Heard that needle was hot. Don’t worry it will only hurt for a minute.”

On a second visit, a few hours later, Mr. Lee provided Detectives Cummings and Heffernan an alibi, the name and number of the woman he was with during the time of the murder. Detective Cummings came back later, telling Mr. Lee that he had spoken to the woman and she had said that Mr. Lee was lying about his alibi. Mr. Lee represented that Detective Cummings was angry and choked him during this interaction with one hand, while Mr. Lee was handcuffed to the bench, “roughed him up,” and called him a liar. Detective Cummings “constantly was slapping me” and “getting into my face.” Detective Heffernan watched from the corner, and she told Mr. Lee that he was in real trouble, that he was about to get the death penalty. They were in the room for 10-15 minutes and did not take the handcuffs off of Mr. Lee.

Mr. Lee said he asked for his attorney “constantly.” In response he was told that he wouldn’t be getting his attorney, and told that this was a high profile case.

Mr. Lee said he had not had anything to eat at this time and that he would fall asleep for a period, and wake up when someone entered the room. Detectives Cummings and Heffernan came in 3-4 times during this period and Mr. Lee always asked for an attorney.

According to Mr. Lee, the next day, he told Detective Cummings that he had been at Pat Good’s home later in the day on the day of the murder. Detective Cummings threatened Mr. Lee: “if I come back and you see that I don’t have my gun on me, I’m really going to mess you up.” Detective Cummings came back later without the gun, uncuffed Mr. Lee, put him against the wall, and Detective Cummings hit Mr. Lee about his body and face with closed fists. Mr. Lee represented that no part of his face swelled up as a result of the beating and he thought Detective Cummings “knew what he was doing.” This event lasted 2-3 minutes. Detective Cummings said that Mr. Lee had sent him “on a wild goose chase” in reference to Mr. Lee’s statement that he had been at Ms. Good’s home. Detectives Heffernan, Judge, and Graziano were also present for this.

Sometime the next day, Detectives Judge, Graziano, Heffernan, and Cummings came into the room. Detective Judge came in first and Mr. Lee asked both Detectives Judge and Graziano to call his attorney. Other detectives told him to “think on this. Not looking good for you.” Either Detective Heffernan or Judge told Mr. Lee that they would try to keep Detective Cummings from coming back in the room, but Mr. Lee was going to have to talk.

Mr. Lee found out that the police had been rounding up witnesses and co-defendants and taking statements. Two female officers took him to another room and told him that certain witnesses were implicating Mr. Lee and his co-defendants were turning on him. One of the officers told Mr. Lee that it looked like he was about to be charged for murder. Mr. Lee asked if he could take a lie detector test. This meeting lasted 10-15 minutes. The female officers took him back to the first interrogation room.

Detectives Cummings and Heffernan came back to the room, laughing at Mr. Lee and told him that co-defendants Mitchell and Campbell had told them that Mr. Lee had been on the

scene. “Crazy part is that we know you didn’t set the fire, you were just there to get your money. But you won’t cooperate, and you’re going to go down for this.”

Detective Graziano came in and told Mr. Lee to “use your head. Don’t be stupid. You’d rather get charged with murder when you should be charged with robbery? Difference is a couple of years and death penalty. If I tell you what I think happened, will you tell me? I think you were just there to get your money, went in with John Mitchell but you didn’t know what he was going to do. That’s robbery, not murder.” Detective Cummings also said, “Look, you think Detective Cummings worked you over, I’m way bigger than Detective Cummings and I punch way harder.” Mr. Lee recalled that Detective Graziano was the biggest detective. Mr. Lee had been at the station for two days at this point.

Mr. Lee believed they were going to pin the murder on him, and Detective Graziano offered him a way out: to confess to the robbery. At this point, Mr. Lee agreed to give a statement and to have it videotaped. Mr. Lee represented that he worked on his statement with Detective Graziano for about an hour. Mr. Lee repeated things that Detective Graziano told him to say.

Mr. Lee represented that he ate one time while he was in police custody, a piece of chicken, but he was unsure who brought it to him. Mr. Lee would get a drink at the water fountain or a faucet when he asked to go to the bathroom. Mr. Lee went to the restroom at least four times.

Mr. Lee represented that once he was taken to Cook County Jail he was processed and saw a member of the medical staff. Mr. Lee did not receive a physical examination and was not asked whether he had been beaten or had any injuries. Mr. Lee did not volunteer the information because he did not have any broken bones or swelling; he had received a “little beating.”

Mr. Lee represented that he had spoken to his attorney before he was picked up by the police, who had told Mr. Lee that Mr. Lee should not speak to the police without an attorney present. Mr. Lee was not allowed to speak to his attorney until he got to Cook County Jail.

## **B. Interviews with Former Counsel**

### **1. Barry Spector**

TIRC investigators spoke with Mr. Lee’s trial counsel, Barry Spector, by telephone on three occasions. During the first conversation, Mr. Spector represented that he recalled the name and case of Raymond Lee.<sup>101</sup> Mr. Spector referred to his first meeting with Mr. Lee following Mr. Lee’s arrest in January 2000, and recalled thinking that “if 25% of what [Lee] said was true, [the confession] would never come in.” He recalled this “clear as day, 20 years ago.”<sup>102</sup> Mr. Spector requested time to review his files before being interviewed.

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<sup>101</sup> Exhibit 6, Record of Interviews of B. Spector at 1.

<sup>102</sup> *Id.* at 1-2.

TIRC investigators conducted an interview of Mr. Spector on September 26, 2018 that lasted approximately one hour.<sup>103</sup> Mr. Spector stated that he had represented Mr. Lee prior to Mr. Lee's January 2000 arrest on a separate case from 1998.<sup>104</sup> Mr. Spector had spoken to Mr. Lee several times on the phone prior to Mr. Lee's arrest in this case and referred to phone records that Mr. Spector had previously obtained to document the calls.<sup>105</sup> On January 3, 2000, Mr. Lee called Mr. Spector's phone number and had an eight minute call.<sup>106</sup> Mr. Spector's recollection of this case is that Mr. Lee informed Mr. Spector that the police were looking for Mr. Lee and the two spoke "at great length" how to deal with the situation if Mr. Lee was taken into custody.<sup>107</sup> Namely, Mr. Spector made sure that Mr. Lee understood his right to request a lawyer.<sup>108</sup> Mr. Spector referred to a call he received from Mr. Lee on January 4, 2000 at 2:18 PM which lasted five minutes.<sup>109</sup> Mr. Spector "is sure" that the two discussed that if Mr. Lee was to be arrested, he should not say anything without his lawyer present.<sup>110</sup> Between January 3, 2000 and the time of Mr. Lee's arrest, there were two more calls from Mr. Lee, each only one minute.<sup>111</sup> Mr. Spector could not say that he spoke to Mr. Lee during those calls.<sup>112</sup>

Mr. Spector also stated that he had previously provided Mr. Lee with a letter and instructed Mr. Lee to carry it on his person: the letter advised that Mr. Lee had retained Mr. Spector as his attorney and that "[i]n the event that any Police Officers, Detectives, Investigators or State's Attorneys wish to question me regarding any pending criminal investigation, it is my intention not to make any statements unless my attorney is present."<sup>113</sup>

The next time Mr. Spector saw Mr. Lee was at Cook County Jail, after Mr. Lee confessed to the crimes and was processed.<sup>114</sup> Mr. Spector reiterated that if 25% of what Mr. Lee told him that day was true, then Mr. Lee's statement would be inadmissible as evidence at trial.<sup>115</sup> Namely, Mr. Lee told Mr. Spector the following:

- (i) Mr. Lee had asked for his lawyer on multiple occasions and the police had ignored his requests repeatedly;
- (ii) The police used physical force by slapping Mr. Lee and throwing him up against the wall;
- (iii) The police intimidated Mr. Lee with threats of additional physical harm;

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<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> These phone records were provided to the TIRC investigators, with the calls to Mr. Spector in advance of Mr. Lee's arrest highlighted, and are attached as Exhibit 11.

<sup>106</sup> *Id.*

<sup>107</sup> Exhibit 6, Record of Interviews of B. Spector at 1.

<sup>108</sup> *Id.*

<sup>109</sup> Exhibit 11, phone records; Exhibit 6, Record of Interviews of B. Spector at 1.

<sup>110</sup> Exhibit 6, Record of Interviews of B. Spector at 1.

<sup>111</sup> Exhibit 11, phone records.

<sup>112</sup> Exhibit 6, Record of Interviews of B. Spector at 1.

<sup>113</sup> Letter dated December 28, 1998, attached as Exhibit 12.

<sup>114</sup> Exhibit 6, Record of Interviews of B. Spector at 1-2.

<sup>115</sup> *Id.*

- (iv) Mr. Lee was threatened in other ways: for example, Mr. Lee was told that he would receive the death penalty and would get “the needle” and impliedly threatened by the police through bringing “all” of Mr. Lee’s family down to the station; and
- (v) Mr. Lee had been promised to be charged with robbery and not murder if he confessed to the crime.<sup>116</sup>

Mr. Spector thought Mr. Lee’s claims were credible at the time.<sup>117</sup> At the time, Mr. Lee could only identify Detective Cummings as one of the officers involved.<sup>118</sup>

Mr. Spector stated that Mr. Lee’s claims were consistent through the duration of the legal proceedings (which spanned over ten years through trial) but that the details of the abuse were further fleshed out in 2008 when Mr. Spector and his partner prepared Mr. Lee for a hearing on the Amended Motion to Suppress.<sup>119</sup> Mr. Spector stated that the substance of the threats and abuse “were consistent” but “more finely tuned over time”: for example, Mr. Lee’s description of the promise he was made to be charged with burglary and not murder never changed and the description of the threats he received (the snapping of the weightlifter’s belt, the promise of the needle) were the same.<sup>120</sup> Additional allegations came to light during the preparation for the hearing, such as Mr. Lee’s contention that the lights were kept on the whole time he was in the interview room and he was not allowed to sleep.<sup>121</sup>

## 2. Robert Loeb<sup>122</sup>

TIRC investigators spoke with Robert Loeb by telephone on two occasions to schedule an interview. On the phone, Mr. Loeb recalled Mr. Lee but requested time to review his files before the interview. TIRC investigators conducted an interview in person on September 27, 2018.

Mr. Loeb was appointed to represent Mr. Lee in early 2000 and represented him through trial.<sup>123</sup> Mr. Loeb was not present during Mr. Spector’s initial interview with Mr. Lee following arrest because he had not yet been appointed as counsel.<sup>124</sup> Mr. Loeb recalls that early in the case, trial counsel was focused on whether probable cause existed at the time of Mr. Lee’s arrest.<sup>125</sup> Mr. Loeb stated that this is common procedure for criminal defense: to address Fourth

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<sup>116</sup> *Id.* at 2.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> Mr. Loeb is a TIRC commissioner; he recused himself from any consideration of this TIRC claim or Mr. Mitchell’s claim.

<sup>123</sup> Exhibit 13, Interview with R. Loeb at 1.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

Amendment concerns first, and move forward with claims available under the Fifth and Sixth Amendments after, as needed.<sup>126</sup> Mr. Loeb felt that there had not been probable cause to arrest Mr. Lee; instead, the police had canvassed the neighborhood, rounded up known persons, and “illegally detained everybody.”<sup>127</sup> This included Mr. Lee’s family and friends; he recalled that threats to call the Department of Child and Family Services being made, and Mr. Lee learned while in custody that his family and friends were being detained.<sup>128</sup> Mr. Loeb noted that this is a “small part” of the intimidation, “if not psychological torture” exacted on a witness.<sup>129</sup> Mr. Loeb discussed the trial court’s finding of flagrant police misconduct at the motion to quash arrest hearing in 2004, and noted that it was a finding based on the police’s “abuse of everyone else.”<sup>130</sup>

Mr. Loeb stated that his recollection was that it was during the preparation of the Amended Motion to Suppress Statements that Mr. Loeb began to hear the details that “filled in the gaps” of Mr. Lee’s experience while being detained.<sup>131</sup> Mr. Loeb discussed his preparation of Mr. Lee for the hearing on Mr. Lee’s Amended Motion to Suppress Statements in 2008. Mr. Loeb had kept his notes from that meeting and provided them to TIRC investigators. Mr. Loeb’s notes from that meeting are consistent with Mr. Lee’s testimony at the hearing, and TIRC investigator’s interview of Mr. Lee in 2017; specifically, that Mr. Lee requested his attorney while at the police station and told the detectives that he would not answer any questions without an attorney present.<sup>132</sup> Detective Cummings slapped Mr. Lee twice as Detective Heffernan watched.<sup>133</sup> The notes reference the threats that Mr. Lee attributed to Detective Heffernan, including that Mr. Lee would spend the next ten years on this case and that his best friend would step into his place with his girlfriend and child.<sup>134</sup> The notes detail similar allegations of physical abuse and threats that Mr. Lee attributes to Detective Cummings: that Mr. Lee was thrown against the wall and pushed in the ribs, stricken about the body, and that Detective Cummings was going to “really [expletive] me up.”<sup>135</sup> The notes corroborate Mr. Lee’s testimony regarding Detective Cumming’s attempts to intimidate Mr. Lee with a weightlifting belt.<sup>136</sup> The notes indicate that Mr. Lee was provided with food on one occasion during his interrogation before he agreed to make a statement; that he was “exhausted” “tired” and “scared.”<sup>137</sup> The notes indicate that Mr. Lee was told by a detective that “If you were just there to get your money and [co-defendant] goes crazy, you won’t get the death penalty. You are just a robber and you won’t get the death penalty. You will be just be charged with Strong Armed Robbery and you’ll be out in seven years. Use your brain. Wouldn’t you rather be a robber than a killer of old men? Just tell us what you did.”<sup>138</sup>

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<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> Exhibit 14, Notes of Trial Counsel dated Nov. 24, 2008, at 4.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* at 5-7.

<sup>136</sup> *Id.* at 7.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.* at 16.

Mr. Loeb recalled that, at the hearing, Mr. Lee's testimony was generally consistent with the motion and their preparation but noted that there were "small inconsistencies" regarding food and when Mr. Lee slept.<sup>139</sup> Mr. Loeb felt that Mr. Lee was credible in his description of his treatment at the police department: Mr. Loeb felt that Mr. Lee provided a "modulated description of what happened to him"; if someone was going to exaggerate the claim, they would have done so on a larger scale.

Mr. Loeb said that what stood out to him at the hearing was Detective Graziano's admission that he said to Mr. Lee "you can be known as a thief and a robber but not a murderer." Mr. Loeb felt this was an admission of inducement or coercion.

Mr. Loeb said he was disappointed in the court's denial of the motion, but not shocked because the nature of the claims were formulaic and the claims were presented "before Area 2 became known to the world."<sup>140</sup>

### **C. Complaint Records of Detectives**

TIRC investigators also reviewed copies of complaint investigation reports filed against the officers identified by Mr. Lee. The reports are summarized below.

#### **1. Detective Michael Cummings**

TIRC investigators also reviewed Detective Cummings's complaint file. The file contained a total of thirty-two (32) complaints filed against him for various alleged conduct including searches without a warrant; use of derogatory and demeaning language, use of a weapon, and conduct during an arrest.

Specifically, on at least seven occasions, complainants alleged that Detective Cummings physically abused them during arrest or interrogation. On one such occasion, Detective Cummings was accused of physically harming an individual during an arrest.<sup>141</sup> Complainant alleged that while he was being handcuffed by another officer, Detective Cummings kicked him on the side of his face. It was determined by the Chicago Police Department investigator that the complainant suffered no serious injuries, and that the officers involved acted properly and only used the amount of force necessary to control the arrestee.<sup>142</sup> The allegations against Detective Cummings were subsequently found to be "NOT SUSTAINED."<sup>143</sup>

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<sup>139</sup> Exhibit 13, Summary of Interview with R. Loeb at 1-2.

<sup>140</sup> *Id.* at 2.

<sup>141</sup> See Exhibit 15, Complaint Registered No. 188293 Summary Report Digest at 2.

<sup>142</sup> *Id.* at 9.

<sup>143</sup> *Id.* at 3.



On a separate occasion, Detective Cummings was accused of mistreatment of an arrestee during interrogation. Complainant alleged that Detective Cummings handcuffed him to the wall for three days, did not give him any food, refused to allow him to have an attorney present, and called complainant a “motherfucker” during the interrogation.<sup>144</sup> The Chicago Police Department investigator determined that the complainant did in fact receive food, but he was unable to prove or disprove the other allegations.<sup>145</sup> The food allegation was found to be “unfounded” while the other three allegations were found to be “NOT SUSTAINED.”<sup>146</sup>

On a separate occasion, Detective Cummings was accused of physical abuse by a witness involved in the Stofer murders.<sup>147</sup> Theodore Mr. Macklin alleged that Detective Cummings slapped him across the face and punched him in the eye while he was held in an interrogation room at the Area 2 station.<sup>148</sup> The complaint investigator found that based on the lack of witnesses, there was no available evidence to either corroborate or refute the allegations.<sup>149</sup> The allegations against Detective Cummings were subsequently found to be “NOT SUSTAINED.”<sup>150</sup>

On a separate occasion, Detective Cummings was among five detectives accused of physical abuse during a murder investigation in an attempt to secure a confession.<sup>151</sup> The complainant alleged that one of the detectives slapped the complainant across the face repeatedly until he agreed to sign a confession.<sup>152</sup> The complaint investigator found that there was insufficient evidence to prove or disprove that the complainant had been slapped in order to get him to sign a confession.<sup>153</sup> The allegations against Detective Cummings were subsequently found to be “NOT SUSTAINED.”<sup>154</sup>

On a separate occasion, Detectives Cummings and Judge were accused of improper conduct during a witness interview.<sup>155</sup> The complainant alleged that Detectives Cummings and Judge interviewed him for eleven hours without food or drink and refused his request to have his attorney present during questioning.<sup>156</sup> Detective Cummings allegedly told the witness “[Expletive redacted] your attorney, you [expletive redacted],” and repeatedly used vulgar, derogatory language and told [complainant] that he was going to charge him with accessory to

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<sup>144</sup> See Exhibit 16, Complaint Registered No. 256744 Summary Report Digest at 7, 23.

<sup>145</sup> *Id.* at 4.

<sup>146</sup> *Id.* at 5.

<sup>147</sup> See Exhibit 17, Complaint Registered No. 259117 Summary Report Digest at 4.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at 6.

<sup>150</sup> *Id.* at 3.

<sup>151</sup> See Exhibit 18, Complaint Registered No. 268252 Summary Report Digest at 2-3.

<sup>152</sup> *Id.* at 2.

<sup>153</sup> *Id.* at 4.

<sup>154</sup> *Id.*

<sup>155</sup> See Exhibit 19, Complaint Registered No. 277901 Summary Report Digest at 2-3.

<sup>156</sup> *Id.* at 3.

homicide.”<sup>157</sup> The complaint investigator found that the complainant failed to cooperate with the investigation, and coupled with the fact that there were no independent witnesses, there was insufficient evidence to prove or disprove the allegations.<sup>158</sup> The allegations against Detective Cummings were subsequently found to be “NOT SUSTAINED.”<sup>159</sup>

On a separate occasion, Detective Cummings and other officers were accused of coercing a false confession which resulted in an arrest and prosecution for First Degree Murder.<sup>160</sup> The complainant, Corethian Bell, alleged that Detective Cummings and other officers “engaged in a number of improper and coercive interrogation tactics in order to force [him] into confessing to the murder of his mother” including isolating the complainant for 50 hours, subjecting him to a polygraph test, falsely telling the complainant that he had failed the polygraph, striking him in the head, and coaching his recitation of the crime.<sup>161</sup> Charges against Bell were dropped after 17 months when DNA results indicated the presence of another man’s blood on the walls of the crime scene.<sup>162</sup> The other man, DeShawn Boyd, pleaded guilty to the murder, and Bell was awarded a \$1 million settlement in a civil suit against Cummings and other detectives.<sup>163</sup> The complaint investigator found that there was insufficient evidence to prove or disprove the allegations.<sup>164</sup> The allegations against Detective Cummings and the other officers were subsequently found to be “NOT SUSTAINED.”<sup>165</sup>

The common thread of physical violence and violation of Chicago Police Department protocols regarding the treatment of people being interviewed provides some evidence in support of Mr. Mitchell’s claim.

## 2. Phillip Graziano

Detective Graziano’s administrative file contained a total of nineteen complaints filed against him for various alleged conduct including false arrest, battery, deprivation of the right to appear in court within forty-eight hours after arrest, failure to provide for the safety and well-being of a person in his control or custody, and numerous warrantless searches.

Specifically, on at least one other occasion, Detective Graziano was accused of physically harming an individual during an arrest.<sup>166</sup> Complainant alleged that Detective Graziano had

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<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> See Exhibit 20, Complaint Registered No. 283846 Summary Report Digest at 2.

<sup>161</sup> Exhibit 21, Complaint at 6-9, Bell v. Cummings, et al. (Ill. Cir. Ct. July 15, 2002).

<sup>162</sup> See Exhibit 20, at 5; see also Exhibit 21, at pp. 10, 11.

<sup>163</sup> See “Life term given in fatal stabbing,” Chicago Tribune, Sept. 22, 2004, available at: <https://www.chicagotribune.com/news/ct-xpm-2004-09-22-0409220234-story.html>; see also Pallasch, Abdon, “\$1 millino for man wrongly imprisoned in mom’s death,” Chicago Sun-Times, Oct. 11, 2006, available at: <http://www.pressreader.com/usa/chicago-sun-times/20061011/281638185695563>

<sup>164</sup> Exhibit 20, Complaint Registered No. 283846 Summary Report Digest at 5-6.

<sup>165</sup> *Id.* at 6.

<sup>166</sup> See Exhibit 22, Complaint Registered No. 190221 Summary Report Digest at 1.

struck him about the body with his fist while another officer struck him several times with a flashlight in the head and arm and a third officer struck him about the body with his fist.<sup>167</sup> It was determined by the Chicago Police Department investigator that Detective Graziano had struck the complainant in order to force the complainant to release an officer with whom he was struggling during an arrest.<sup>168</sup> The allegations against Detective Graziano were subsequently found to be “NOT SUSTAINED.”<sup>169</sup>

On a separate occasion, Detective Graziano was accused of arresting an individual but not booking or processing him for two days, resulting in the deprivation of the complainant’s right to appear in court within forty-eight hours of arrest.<sup>170</sup> Ultimately, the claim was found to be “NOT SUSTAINED.”

On a separate occasion, Detective Graziano was found to have failed to provide for the safety and well-being of a person who was in his control/custody when a person brought into the police station for questioning was found to have hung and killed himself in his interview room.<sup>171</sup> The Chicago Police Department investigator’s summary read in relevant part:

#### **CONCLUSION:**

The reporting investigator recommends that the allegation that Detectives [redacted] and Graziano were inattentive to duty in that they failed to provide for the safety, welfare and well-being of [the deceased] be Sustained. Although the detectives denied the allegation, the evidence indicates that [the deceased] committed suicide while in their custody after the detectives failed to remove all strings/laces with which [the deceased] could use to hang himself.

Although Detectives [redacted] and Graziano claimed that [the deceased] was cooperating with them and voluntarily stayed in the interview where he was found hanging, they admitted that they had accompanied him to his house and brought him back to the police station. It does not follow that [the deceased] was cooperating with the detectives and was voluntarily in custody if the detectives had to follow him home and had to bring him back to the police station and lock him in an interview room.

Additionally, [another person being simultaneously held for questioning], who was placed in a different interview room by the detectives stated that he was not free to leave the station and was being held against his will. [The person of interest] maintained the detectives did not remove his strings/laces from him until after the discovery of the apparent suicide of [the deceased] Therefore, one could reasonably infer . . . that the

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<sup>167</sup> *Id.*

<sup>168</sup> *Id.* at 5.

<sup>169</sup> *Id.* at 3.

<sup>170</sup> See Exhibit 23, Complaint Registered No. 293158 Summary Report Digest at 3. Detectives acknowledged the timeline, but contended the suspect stayed with them voluntarily and was not under arrest. *Id.*

<sup>171</sup> See Exhibit 24, Summary of Complaints Directed at Phillip Graziano; Complaint Registered No. 252595 Summary Report Digest at 5.

detectives did not remove the strings/laces from [the deceased] until after they found out that he had hung himself.<sup>172</sup>

The common thread of physical violence and violation of Chicago Police Department protocols regarding the treatment of interviewees -- and the subsequent attempts to cover up the violations -- provides some evidence in support of Mr. Lee's claim.

### 3. Eileen Heffernan

Detective Heffernan's administrative file contained a total of fourteen complaints filed against her for various alleged conduct including battery, destruction of personal property, and warrantless searches.

Specifically, Detective Heffernan was found to have battered an individual by kicking him on the body and face during an arrest.<sup>173</sup> The complaint was sustained by the Office of Professional Standards for violation of Rule 8 ("Disrespect to or maltreatment of any person while on or off duty" "in that on 17 August 1991, at approximately 0030 hours Officer Heffernan kicked an individual."<sup>174</sup>

In three other complaints, Detective Heffernan was alleged to have battered, or been present for the battery of, a complainant. Each of those instances were not sustained or unfounded. Detective Heffernan was alleged to have been present for, and restrained an individual during and failed to stop, the battery of one complainant.<sup>175</sup> The complaint was "NOT SUSTAINED."

The common thread of physical violence provides some evidence in support of Mr. Lee's claim.

### 4. Daniel Judge

TIRC investigators also reviewed Detective Judge's administrative file. The file contained a total of thirteen (13) complaints against him for various conduct, including false arrest, improper seizure of property, and improper interrogation conduct. Specifically, on at least one occasion, Detectives Judge and Cummings were accused of improper conduct during a witness interview.<sup>176</sup> The complainant alleged that Detectives Cummings and Judge interviewed him for eleven hours without food or drink and refused his request to have his attorney present during questioning.<sup>177</sup> Detective Cummings allegedly told the witness "[Expletive redacted] your attorney, you [expletive redacted]," and repeatedly used vulgar, derogatory language and

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<sup>172</sup> *Id.* at 11.

<sup>173</sup> See Exhibit 25, Complaint Registered No. 186618 Summary Report Digest at 3.

<sup>174</sup> *Id.* at 15.

<sup>175</sup> See Exhibit 26, Summary of Complaints Directed at Eileen Heffernan; Complaint Registered No. 171941 Summary Report Digest at 5.

<sup>176</sup> See Exhibit 19, Complaint Registered No. 277901 Summary Report Digest at 2-3.

<sup>177</sup> *Id.* at 3.

told [complainant] that he was going to charge him with accessory to homicide.”<sup>178</sup> The complaint investigator found that the complainant failed to cooperate with the investigation, and coupled with the fact that there were no independent witnesses, there was insufficient evidence to prove or disprove the allegations.<sup>179</sup> The allegations against Detective Judge were subsequently found to be “NOT SUSTAINED.”<sup>180</sup>

The common thread of interview techniques and intimidation provides some evidence in support of Mr. Mitchell’s claim.

#### **D. Complaints Lodged by Co-Defendants, Witnesses**

##### **1. Mitchell Report**

Mr. Lee’s co-defendant, John Mitchell has filed a TIRC Claim that is being presented concurrently with this report.<sup>181</sup> In short, Mr. Mitchell alleges that he confessed to the crimes of murder, arson, home invasion, and residential burglary after being beaten and tortured by Chicago Police Department Area 2 Detective Michael T. Cummings on January 6, 2000.<sup>182</sup> Mr. Mitchell alleges that Detective Cummings made false promises; denied Mr. Mitchell access to his attorney, food, and the restroom; threatened action against Mr. Mitchell’s girlfriend and her daughter; threatened to place Mr. Mitchell’s fingerprints at the scene of the crime; and physically struck and kicked Mr. Mitchell while he was handcuffed during interrogation.<sup>183</sup> Mr. Mitchell alleges that because of the abuse, he eventually recorded a videotaped confession statement incriminating himself.<sup>184</sup> In that case, on Mr. Mitchell’s motion to quash, Judge Sumner found that the detectives were not reliable witnesses when testifying regarding the circumstances of Mr. Mitchell’s arrest.<sup>185</sup>

##### **2. Complaints of Witnesses**

As noted above, during the hearing on Mr. Lee’s Amended Motion to Suppress Statements, Dedric Scales testified that on January 5, 2000, he went to the police station where he spoke with police officers regarding the offense at issue.<sup>186</sup> Mr. Scales stated that he was repeatedly denied his requests for an attorney and that Detective Cummings threatened to charge him with murder if he did not tell the truth.<sup>187</sup> The police officers never advised him of his constitutional rights.<sup>188</sup> On cross-examination, Scales stated that an assistant State’s Attorney had advised him of his Miranda rights, which he waived by agreeing to speak with her, and that

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<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> See Report and Recommendation, *In re Claim of John Mitchell*, TIRC Claim No. 2013.156-M, at 1.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> *Id.* at 4-5, 10.

<sup>186</sup> Exhibit 2, 2012 App. Ct. Order, at ¶ 12.

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

he signed a handwritten statement.<sup>189</sup> He also informed the Assistant State's Attorney that he was treated "fair" and "well" by the police.<sup>190</sup> Theodore Macklin testified that he went to the police station on January 4, 2000 and spoke with Detective Cummings who told Mr. Macklin that he was in trouble for murder.<sup>191</sup> Detective Cummings slapped his face several times, causing Mr. Macklin to lose an earring, and pushed him out of his unlaced shoes.<sup>192</sup> The police officers also failed to heed Macklin's requests for an attorney, but he was eventually able to confer with an attorney his mother had sent to the police station.<sup>193</sup> Mr. Macklin stated that he was at the police station for three days and that the police gave him food that had been partially eaten and a soda that was already open.<sup>194</sup> Mr. Macklin also voluntarily submitted to a lie detector test, but never informed the polygraph examiner, the Assistant State's Attorney, or the grand jury that he was mistreated by the police.<sup>195</sup> Rather, he indicated that he was treated "okay" by the police officers.<sup>196</sup> Subsequently, Mr. Macklin's mother filed a complaint with the police department regarding his mistreatment by the police; however, Mr. Macklin later chose not to pursue the complaint.<sup>197</sup>

## V. STANDARD OF PROOF

Section 40(d) of the Illinois Torture Inquiry and Relief Act permits the Commission to conduct inquiries into claims of torture.<sup>198</sup>

'Claim of torture' means a claim on behalf of a living person convicted of a felony in Illinois asserting that he was tortured into confessing to the crime for which the person convicted and the tortured confession was used to obtain the conviction and for which there is *some credible evidence* related to allegations of torture.<sup>199</sup>

If five or more Commissioners conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, the case will be referred to the Chief Judge of the Circuit Court of Cook County.<sup>200</sup> If fewer than five Commissioners come to the same conclusion, the Commission will conclude there is insufficient evidence of torture to merit judicial review.<sup>201</sup>

The Commission was not asked by the General Assembly to conduct a full, adversarial, evidentiary hearing concerning the likelihood of torture, or even to make a final finding of fact

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<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> *Id.* at ¶ 13.

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> See 775 ILCS 40/40(d).

<sup>199</sup> 775 ILCS 40/5 (emphasis supplied).

<sup>200</sup> See 775 ILCS 40/45(c).

<sup>201</sup> *Id.*

that torture likely occurred, as that is the role of the courts. Rather, the Commission has interpreted Section 45(c) as requiring that there is sufficient evidence of torture to merit judicial review, not that it be more likely than not that any particular fact occurred.<sup>202 203</sup>

## VI. ANALYSIS OF THE EVIDENCE

There are reasons to doubt Mr. Lee's allegations of torture.

First, there is no physical evidence of any abuse or injury. Indeed, Mr. Lee testified that he did not inform the paramedic at Cook County Jail of his treatment by Detectives Cummings, Heffernan, Judge, and Graziano because his injuries weren't serious enough to merit attention.

Second, while Mr. Lee's allegations remain generally consistent over time, there are minor inconsistencies between the accounts Mr. Lee has provided. For example, the record on whether or not Mr. Lee was able to sleep in the interview room is inconsistent: one version of the motion to suppress states that he was able to sleep for a period of time before being woken up; subsequent testimony recalls that he was not allowed to sleep at all.

Third, each of the detectives involved in the investigation have, under oath, denied that any abuse took place. However, Detective Graziano did testify to making a statement to Mr. Lee about whether it was better to be known "as a thief and a liar than a killer of old men," and Mr. Lee testified that he heard Detective Graziano's statement as meaning that it was better to be known as a "robber" rather than a "murderer" and understood it to be part of the promise that he would be charged for strong armed robbery, rather than murder, if he confessed to the crime.

Finally, the Illinois Appellate Court for the First District of Illinois reviewed the trial court's findings regarding the voluntariness of Mr. Lee's statements and found that they were not against the manifest weight of the evidence presented during the hearing. According to the Appellate Court, Mr. Lee's allegations of physical coercion centered solely on *his* version of what occurred, and the Court referenced the portions of the record in which the detectives denied ever striking or observing anyone strike Mr. Lee during his time in custody, and further denied seeing Detective Cummings snap a weightlifting belt to intimidate the defendant. This factor is mitigated by the fact that the trial court, when presented with contrasting testimony between Mr. Lee and the detectives, sided with the Detectives *despite its finding of "physical and psychological coercion."* If confronted with the evidence as it exists today, it is possible that the trial court would have come to a different conclusion.<sup>204</sup>

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<sup>202</sup> See 2 Ill. Adm. Code 3500.385(b)(1). In general, the approach taken by the Commission is similar to "probable cause." There must be enough evidence that the claim should get a hearing in court. See FAQ No. 8, <https://www.illinois.gov/tirc/Pages/FAQs.aspx/>.

<sup>203</sup> Although Section 55(a) of the TIRC Act (775 ILCS 40/55(a)) makes Commission decisions subject to the Administrative Review Law, Commission decisions do not concern "contested cases" as defined in the Illinois Administrative Procedure Act (5 ILCS 100/1-30) because TIRC proceedings do not require an opportunity for a hearing. See 775 ILCS 40/45(a): "The determination as to whether to conduct hearings is solely in the discretion of the Commission."

<sup>204</sup> See, e.g., *Justice Department Announces Findings of Investigation into Chicago Police Dep't: Justice Dep't Finds a Pattern of Civil Rights Violations by Chicago Police Dep't*, U.S. Dep't of Justice (Jan. 13, 2017), available

However, there are substantial reasons to believe Mr. Lee's allegations of torture. First, Mr. Lee's claims of torture are specific, and consistent over time. Trial counsel recalls being provided with exacting details regarding Mr. Lee's treatment at his first meeting following arrest with Mr. Lee: threats of receiving "the needle," of physical abuse and intimidation with the weightlifting belt. The Motion to Quash, filed in October 2000, reflected these conversations and detailed allegations of the abuse Mr. Lee allegedly suffered during his detention at the police station. There are contemporaneous filings that indicate a belief that Mr. Lee had claims against the police for these actions: Mr. Lee, through his trial counsel, issued a subpoena in 2001 to the Chicago Police Department seeking documents relating to claims of abuse previously filed against these detectives; and the briefing on the City of Chicago's Motion to Quash Subpoena contained similar allegations of abuse and detailed threats purportedly made against Mr. Lee, including threats regarding his receiving the death penalty and statements regarding "hot needles."

The Amended Motion to Suppress Statements is consistent with the details contained in the Motion to Suppress. Mr. Lee's testimony from the hearing on that motion is consistent with both prior versions of the events, and generally consistent with the interview TIRC investigators conducted in 2017 regarding specific instances of physical violence, the content and nature of threats, the provision of food and drink and promises allegedly made to Mr. Lee in exchange for his testimony.

Evidence regarding the denial of counsel also supports Mr. Lee's account of the events. Trial counsel provided TIRC investigators with phone records, previously obtained, showing that he had counseled Mr. Lee on multiple occasions regarding how to ask for a lawyer, should Mr. Lee be picked up by the police. Trial counsel also provided a letter that he had previously penned on behalf of Mr. Lee stating that Mr. Lee was represented by counsel, and that he had directed Mr. Lee to carry.

The administrative files of the detectives alleged to have tortured Mr. Lee reflect a pattern of alleged physical violence and a disregard for the Chicago Police Department's protocols regarding treatment of persons of interest or persons who have been arrested. Of particular note is the account of Theodore Macklin, a witness in the same investigation resulting in the arrest of Mr. Lee, who testified at a hearing in this trial proceeding that he was physically abused by Detective Cummings and threatened by police officers into providing information. These reports further support Mr. Lee's claim.

Finally, the trial court's findings regarding the misconduct of the detectives lend support to Mr. Lee's allegations regarding his treatment in the interrogation room. In deciding Mr. Lee's Motion to Quash Arrest, Judge Sumner found, in spite of the detectives' testimony to the contrary, that there was flagrant misconduct on the part of the police. While certainly not dispositive, a lack of credibility on the issue of probable cause of arrest lends support to the idea that the detectives might not have testified honestly and fulsomely regarding Mr. Lee's

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at <https://www.justice.gov/opa/pr/justice-department-announces-findings-investigation-chicago-police-department> (last visited Oct. 9, 2018).

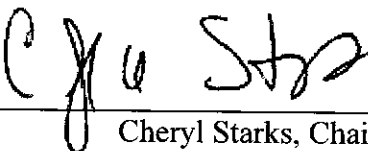


interrogation. Moreover, Judge Claps, while denying Mr. Lee's Amended Motion to Suppress, found that there was "physical and psychological coercion." These factors further support Mr. Lee's claim.

## VII. CONCLUSION

For all the reasons set forth above and in the Findings of Fact, the Commission finds that there is sufficient credible evidence that Mr. Lee was tortured and merits referral for judicial review. This determination shall be considered a final decision of an administrative agency for purposes of administrative review under the Administrative Review Law (735 ILCS 5/3-101).<sup>205</sup>

DATE: December 18, 2018

  
Cheryl Starks, Chair

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CLERK OF CIRCUIT COURT

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<sup>205</sup> See 775 ILCS 40/55(a) of the TIRC Act.

Although this determination does not concern a "contested case" as defined in Section 1-30 of the Illinois Administrative Procedures Act (5 ILCS 100/1-30) because no opportunity for a hearing is required (See 775 ILCS 40/45(a)), the Commission notes that the rules of the Commission do not require any motion or request for reconsideration before appeal under the Administrative Review Law, and notes that the service address of interested parties is listed in the Notice of Filing certificate that accompanies the filing of this determination with the Court.